



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,251	03/21/2001	Robert W. Stadler	P-8777	5575

27581 7590 05/30/2003

MEDTRONIC, INC.  
710 MEDTRONIC PARKWAY NE  
MS-LC340  
MINNEAPOLIS, MN 55432-5604

EXAMINER

OROPEZA, FRANCES P

ART UNIT	PAPER NUMBER
----------	--------------

3762

DATE MAILED: 05/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/814,251

Applicant(s)

STADLER ET AL.

Examiner

Frances P. Oropeza

Art Unit

3762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): 35 U.S.C. 112 rejection of record.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1, 4, 5 and 7-11.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☒ The proposed drawing correction filed on 16 May 2003 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

Art unit 3762  
Frances P. Oropeza  
5-23-03

Continuation of 5. does NOT place the application in condition for allowance because:

The Applicant's arguments filed 5/16/03 have been fully considered, but they are not convincing.

Relative to claims 1, 4 and 5, the Applicant asserts Gunderson does not teach a means for defining a discrimination criteria. The Examiner disagrees. The means for defining the discrimination criteria is the establishment of preset parameters in the device during manufacture, or allowing the physician to program the parameters during implantation (col. 4 @ 10-27).

Relative to claim 1, the Applicant asserts Gunderson does not teach that the threshold number is set as a value which increases as an inverse function of the length of the intervals between depolarizations. The Examiner disagrees. Gunderson teaches an embodiment where the length of the intervals are monitored and as the intervals become shorter, moving from high rate tachycardia to fibrillation, the threshold value increases (col. 2 @ 63 - col. 3 @ 9).

Relative to claim 4, the Applicant asserts Gunderson does not teach the threshold number which increase as an inverse function of a defined percentile of the length of the intervals. The Examiner disagrees. Gunderson teaches an embodiment where the length of the intervals are monitored and as the intervals become shorter, moving from high rate tachycardia to fibrillation, the threshold value increases. The ratio of intervals is read as a percentage (col. 2 @ 63 - col. 3 @ 9).

Relative to claim 5, the Applicant asserts, the combination of Gunderson and Rossing does not teach the threshold number is a set value which increase as an inverse function of the 75th percentile of the length of the intervals. The Examiner disagrees. Gunderson teach an embodiment where the length of the intervals are monitored and as the intervals become shorter, moving from high rate tachycardia to fibrillation, the threshold value increases (col. 2 @ 63 - col. 3 @ 9). The Rossing reference is combined with Gunderson for the teaching that the 75th percentile cycle length is a stringent criteria appropriately used to judge cardiac rhythms (col. 4 @ 7-13).

The rejection of record stands.

JED  
5/23/03

Angela D. Sykes

ANGELA D. SYKES  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700